

PUBLIC MATTER

FILED

DEC 28 2016

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

STATE BAR OF CALIFORNIA
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STATE BAR COURT

HEARING DEPARTMENT - LOS ANGELES

In the Matter of:) Case Nos. 15-O-10052, 15-O-10055 and
ANDREW JAMES STERN,) 16-O-10496
No. 51648,) NOTICE OF DISCIPLINARY CHARGES
A Member of the State Bar.)

NOTICE - FAILURE TO RESPOND!

**IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE
WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT
THE STATE BAR COURT TRIAL:**

- (1) YOUR DEFAULT WILL BE ENTERED;**
- (2) YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU
WILL NOT BE PERMITTED TO PRACTICE LAW;**
- (3) YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN
THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION
AND THE DEFAULT IS SET ASIDE, AND;**
- (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.
SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE
OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN
ORDER RECOMMENDING YOUR DISBARMENT WITHOUT
FURTHER HEARING OR PROCEEDING. SEE RULE 5.80 ET SEQ.,
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**



1 The State Bar of California alleges:

2 JURISDICTION

3 1. Andrew James Stern ("Respondent") was admitted to the practice of law in the State
4 of California on January 5, 1972, was a member at all times pertinent to these charges, and is
5 currently a member of the State Bar of California.

6 COUNT ONE

7 Case No. 15-O-10052
8 Rules of Professional Conduct, rule 4-100(A)
[Commingle Personal Funds in Client Trust Account]

9 2. Between on or about August 13, 2011 and on or about June 22, 2015, Respondent
10 deposited or commingled funds belonging to Respondent into his client trust account at Bank of
11 America, account number xxxx-x6085¹, by depositing earned fees and/or personal funds into the
12 account and thereafter withdrawing or disbursing those amounts as needed, including but not
13 limited to disbursements on or about February 21, 2014 to the Park Century School for \$21,800
14 and on or about April 8, 2014 to the Park Century School for \$52,840, in wilful violation Rules
15 of Professional Conduct, rule 4-100(A) as follows:

<u>No.</u>	<u>Date</u>	<u>Amount</u>	<u>Payer & [Notes re Payment]</u>
16			
17	1.	8/13/11	\$5,000 Andrew & Jacqueline Stern
18	2.	10/26/11	\$10,000 Robert W. Hirsh & Associates [General Account Check]
19	3.	11/4/11	\$10,000 Robert W. Hirsh & Associates [General Account Check]
20	4.	11/18/11	\$10,000 Robert W. Hirsh & Associates [General Account Check]
21	5.	4/20/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
22	6.	4/30/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
23	7.	5/16/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
24	8.	5/24/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
25	9.	6/28/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
26	10.	7/8/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
27	11.	8/17/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
28	12.	9/4/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	13.	9/19/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	14.	10/10/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	15.	10/30/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	16.	11/13/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	17.	11/19/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]
	18.	11/26/12	\$10,000 Robert W. Hirsh & Associates [General Account Check]

¹ The account number has been redacted to protect the account and account holder.

1	19.	12/2/12	\$500	Janelle Lopez
	20.	12/7/12	\$10,000	Robert W. Hirsh & Associates [General Account Check]
2	21.	1/6/13	\$600	Marisa Tomei [Payable to Molly Stern]
	22.	1/16/13	\$600	Marisa Tomei [Payable to Molly Stern]
3	23.	3/2/13	\$14,000	Jacqueline Stern [Discover Bank]
	24.	5/30/13	\$5,000	Jacqueline Stern [Chase Bank]
4	25.	7/10/13	\$1,900	U.S. Treasury [Memo – Soc Sec for Jun]
	26.	8/27/13	\$7,500	Isaac Richtiger [Memo – Loan]
5	27.	9/10/13	\$17,500	Isaac Richtiger [Memo – Loan]
	28.	11/7/13	\$10,000	Robert W. Hirsh & Associates [General Account Check]
6	29.	11/15/13	\$10,000	Isaac Richtiger [Memo – Loan]
7	30.	11/19/13	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	31.	12/3/13	\$10,000	Robert W. Hirsh & Associates [General Account Check]
8	32.	12/5/13	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	33.	12/13/13	\$5,000	Isaac Richtiger [Memo – Loan]
9	34.	12/16/13	\$10,000	Robert W. Hirsh & Associates [General Account Check]
10	35.	1/29/14	\$600	Marisa Tomei [Payable to Molly Stern]
	36.	1/31/14	\$500	Charles Schwab
11	37.	2/3/14	\$5,000	Franklin Templeton Investments
	38.	2/7/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
12	39.	2/12/14	\$25,000	Robert W. Hirsh & Associates [General Account Check]
	40.	3/4/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
13	41.	3/31/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	42.	4/4/14	\$6,000	Charles Schwab
14	43.	4/7/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
15	44.	5/5/14	\$6,000	Jacqueline Stern [Chase Bank]
	45.	5/9/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
16	46.	5/16/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	47.	7/18/14	\$25,000	David Richtiger Trust [Memo – Loan]
17	48.	7/21/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
18	49.	8/4/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	50.	8/25/15	\$600	Marisa Tomei [Payable to Molly Stern]
19	51.	8/28/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	52.	9/9/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
20	53.	9/30/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	54.	10/14/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
21	55.	10/29/14	\$2,000	Andrew and Jacqueline Stern
	56.	11/3/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
22	57.	11/17/14	\$1,000	Charles Schwab
	58.	11/21/14	\$10,000	Robert W. Hirsh & Associates [General Account Check]
23	59.	11/23/14	\$600	Marisa Tomei [Payable to Molly Stern]
	60.	12/4/14	\$600	Marisa Tomei [Payable to Molly Stern]
24	61.	12/5/14	\$2,000	Andrew and Jacqueline Stern
25	62.	12/5/14	\$1,000	Jacqueline Stern [Chase Bank]
	63.	12/8/14	\$500	Jacqueline Stern [Chase Bank]
26	64.	12/31/14	\$600	Marisa Tomei [Payable to Molly Stern]
27	65.	1/20/15	\$10,000	Robert W. Hirsh & Associates [General Account Check]
	66.	1/22/15	\$30,000	U.S. Bank [Memo – Loan 4694 Century City]
28	67.	4/8/15	\$10,000	Robert W. Hirsh & Associates [General Account Check]

68.	4/10/15	\$10,000	Robert W. Hirsh & Associates [General Account Check]
69.	5/26/15	\$10,000	Robert W. Hirsh & Associates [General Account Check]
70.	5/29/15	\$20,000	Isaac Richtiger [Memo – Loan]
71.	6/3/15	\$2,200	Jacqueline Stern [Chase Bank]
72.	6/22/15	\$10,000	Robert W. Hirsh & Associates [General Account Check]

COUNT TWO

Case No. 15-O-10052
Rules of Professional Conduct, rule 4-100(B)(3)
[Failure to Render Accounts of Client Funds]

3. Between on or about August 13, 2011 and on or about June 22, 2015, Respondent deposited funds belonging to different clients, including but not limited to: Isaac Richtiger; the David Richtiger Trust; Yismach Moshe; Jacqueline Stern, and Molly Stern, into his into his client trust account at Bank of America, account number xxxx-x6085.² Thereafter, Respondent failed to prepare and maintain appropriate records concerning those funds and his client trust account, including but not limited to a client ledger for each client, the written journal for the client trust account, and the monthly reconciliation for the client trust account. By failing to prepare and maintain appropriate records concerning those funds and his client trust account, Respondent willfully violated Rules of Professional Conduct, rule 4-100(B)(3).

COUNT THREE

Case No. 15-O-10055
Rules of Professional Conduct, rule 3-310(C)(1)
[Potential Conflict - Representing Multiple Clients]

4. On or about August 23, 2011, Respondent accepted representation of multiple clients, Timothy E. McGinty ("McGinty") and Noam Bouzaglou/Ness Adam, Inc. ("Bouzaglou"), in joint representation with respect to the improvement of the house that McGinty was the trustee for the McGinty Family Trust. At that time he accepted their joint representation, the interests of the clients potentially conflicted in that: (A) McGinty was a dependent adult; (B) Respondent required McGinty to agree that if a conflict arose, Respondent could continue to represent Bouzaglou; (C) "[a]ny legal services which may be construed to have been performed on behalf of McGinty are at the request of Bouzaglou and any payments for the services rendered by this office which may be deducted from monies held by this office in trust for McGinty are being

² The account number has been redacted to protect the account and account holder.

1 made pursuant to instructions of Bouzaglou and with the express consent of McGinty”; (D)
2 Respondent represented Bouzaglou and himself in litigation brought against Bouzaglou and
3 himself by the successor trustee regarding the house. Respondent failed to inform McGinty of
4 the potential conflicts, and of the actual and reasonably foreseeable adverse consequences to the
5 clients and therefore, failed to obtain informed written consent from McGinty, in willful
6 violation of the Rules of Professional Conduct, rule 3-310(C)(1).

7 COUNT FOUR

8 Case No. 15-O-10055
9 Rules of Professional Conduct, rule 3-310(C)(2)
[Actual Conflict - Representing Multiple Clients]

10 5. Between on or about August 25, 2011 and at least May 16, 2012, Respondent
11 continued representation of multiple clients, Timothy E. McGinty (“McGinty”) and Noam
12 Bouzaglou/Ness Adam, Inc. (“Bouzaglou”), in joint representation with respect to the
13 improvement of the house that McGinty was the trustee for the McGinty Family Trust (“Trust”).
14 On or about August 23, 2011, Respondent assisted McGinty in depositing the approximately sum
15 of \$294,320.91 into Respondent’s client trust account at Bank of America, account number
16 XXXXX-X6085,³ for “the benefit of Timothy E. McGinty.” Between on or about January 6,
17 2012 and on or about May 16, 2012, the interests of the clients actually conflicted in that: (A)
18 McGinty was a dependent adult; (B) on or about August 25, 2011, Respondent obtained
19 McGinty’s uninformed consent to pay \$270,000 from the funds received on behalf of McGinty
20 and/or Trust to Bouzaglou in knowing or grossly negligent violation of Business and Professions
21 Code section 7159.5, which prohibits, in part, the downpayment in a home improvement contract
22 to exceed \$1,000 or 10 percent of the contract amount, whichever is less; (C) on or about August
23 29, 2011, Respondent paid \$270,000 from the funds received on behalf of McGinty and/or the
24 Trust to Bouzaglou in knowing or grossly negligent violation of Business and Professions Code
25 section 7159.5; (D) on or about January 6, 2012, Respondent prepared a “Special Power of
26 Attorney” for McGinty to sign and that McGinty signed appointing Bouzaglou to act in place of
27 McGinty and/or the Trust with regard to the improvement of the house; (E) on or about May 15,

28 ³ The account number has been redacted to protect the account and account holder.

1 2012, Respondent prepared a "Property Transfer Agreement" for McGinty to sign and that
2 McGinty signed transferring ownership of the house to Bouzaglou; and (F) on or about May 16,
3 2012, Respondent assisted in the quit claim of the house from the Trust to Bouzaglou.
4 Respondent continued representation of more than one client in the matter and did not inform the
5 clients of the relevant conflicts of interest and of the actual and reasonably foreseeable adverse
6 consequences to the clients and obtain the written consent of each client in which the interests of
7 the clients actually conflicted without the informed written consent of each client, in willful
8 violation of the Rules of Professional Conduct, rule 3-310(C)(2).

9 COUNT FIVE

10 Case No. 15-O-10055
11 Business and Professions Code section 6106
[Moral Turpitude – Breach of Fiduciary Duty and Fraud]

12 6. On or about August 23, 2011, Respondent accepted joint representation of clients,
13 Timothy E. McGinty ("McGinty") and Noam Bouzaglou/Ness Adam, Inc. ("Bouzaglou"), i.e., to
14 assist both Bouzaglou and McGinty with respect to the improvement of the house that McGinty
15 was the trustee for the McGinty Family Trust ("Trust") and therefore, Respondent assumed a
16 fiduciary duty to both Bouzaglou and McGinty/Trust. However, on or about: (A) August 25,
17 2011, Respondent obtained McGinty's uninformed consent to pay \$270,000 from the funds
18 received on behalf of McGinty and/or Trust to Bouzaglou in knowing or grossly negligent
19 violation of Business and Professions Code section 7159.5, which prohibits, in part, the
20 downpayment in a home improvement contract to exceed \$1,000 or 10 percent of the contract
21 amount, whichever is less; (B) August 29, 2011, Respondent paid \$270,000 from the funds
22 received on behalf of McGinty and/or the Trust to Bouzaglou in knowing or grossly negligent
23 violation of Business and Professions Code section 7159.5; (C) January 6, 2012, Respondent
24 prepared a "Special Power of Attorney" for McGinty to sign and that McGinty signed appointing
25 Bouzaglou to act in place of McGinty and/or the Trust with regard to the improvement to the
26 house; (D) May 15, 2012, Respondent prepared a "Property Transfer Agreement" for McGinty to
27 sign and that McGinty signed transferring ownership of the house to Bouzaglou that contained
28 was not fair and reasonable to McGinty, was not written in a manner that could have been

1 reasonable understood by McGinty, and falsely claimed that “no lender will provide the
2 necessary funds to finish the remodeling and building additions unless Bouzagloul was the title
3 holder to the Property; (E) on or about May 16, 2012, Respondent assisted Bouzagloul in the quit
4 claim of the house from the Trust to Bouzagloul; and (F) by representing multiple parties,
5 including one who was a dependent adult, with regard to the improvement to the house and in so
6 doing compromised his duty of loyalty to and defrauded McGinty. By assisting Bouzagloul in
7 the transfer of the \$270,000 to Bouzagloul, preparing and assisting Bouzagloul in obtaining a
8 “Special Power of Attorney” from McGinty, preparing and assisting Bouzagloul in obtaining a
9 “Property Transfer Agreement” from McGinty, assisting Bouzagloul in obtaining a quit claim
10 of the house from McGinty and/or the Trust, and representing multiple parties with regard to the
11 improvement to the house, Respondent breached the fiduciary duty he owed to McGinty and
12 participated in the fraud that causing McGinty and/or the Trust to lose the \$270,000 and the
13 house, and incur unnecessary attorney’s fees and costs to retrieve the house, and therefore,
14 committed acts involving moral turpitude, dishonesty, corruption and fraud in willful violation of
15 Business and Professions Code section 6106.

16 COUNT SIX

17 Case No. 15-O-10055
18 Business and Professions Code section 6068(o)(1)
[Failure to Report Judgment for Fraud]

19 7. Respondent failed to report to the State Bar of California, in writing, within 30 days
20 of the time Respondent had knowledge thereof, the entry of judgment against the attorney for
21 fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a
22 professional capacity, in willful violation of Business and Professions Code section 6068(o)(1),
23 by failing to report the judgment entered against him on or about September 18, 2014, for fraud
24 accompanied by recklessness and malice, and professional negligence in the matter filed in the
25 Superior Court of California, County of Los Angeles, titled *Jeanne Haworth, Successor Trustee*
26 *v. Noam Bouzagloul*, LASC Case No. BC495095.

1 COUNT SEVEN

2 Case No. 16-O-10496
3 Business and Professions Code section 6103
4 [Failure to Obey a Court Order]

5 8. Respondent disobeyed or violated an order of the court requiring him to do or forbear
6 an act connected with or in the course of his profession which he ought in good faith to do or
7 forbear by failing to comply with the May 13, 2015 order of the Superior Court of California,
8 County of Los Angeles, to personally pay sanctions pursuant to Code of Civil Procedure section
9 396b(b) in the amount of \$7,500 to the defendant in the matter titled *BHPRA INC. vs. SAGE*
10 *DMC, LLC, et al.*, LASC Case No. SC123051, in willful violation of Business and Professions
Code section 6103.

11 COUNT EIGHT

12 Case No. 16-O-10496
13 Business and Professions Code section 6068(o)(3)
14 [Failure to Report Judicial Sanctions]

15 9. Respondent failed to report to the agency charged with attorney discipline, in writing,
16 within 30 days of the time he had knowledge of the imposition of judicial sanctions against him
17 by failing to report to the State Bar the \$7,500 in sanctions the court imposed on Respondent on
18 or about May 13, 2015, in connection with *BHPRA INC. vs. SAGE DMC, LLC, et al.*, LASC
Case No. SC123051, in willful violation of Business and Professions Code section 6068(o)(3).

19 NOTICE - INACTIVE ENROLLMENT!

20 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
21 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
22 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
23 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
24 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE
ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE
RECOMMENDED BY THE COURT.

25 NOTICE - COST ASSESSMENT!

26 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC**
27 **DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS**
28

1 **INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING**
2 **AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND**
3 **PROFESSIONS CODE SECTION 6086.10.**

4 Respectfully submitted,

5 THE STATE BAR OF CALIFORNIA
6 OFFICE OF THE CHIEF TRIAL COUNSEL

7 DATED: December 28, 2016

8 By: 

9 Charles T. Calix
10 Senior Trial Counsel
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DECLARATION OF SERVICE

by

U.S. FIRST-CLASS MAIL / U.S. CERTIFIED MAIL / OVERNIGHT DELIVERY / FACSIMILE-ELECTRONIC TRANSMISSION

CASE NUMBER(s): **15-O-10052, 15-O-10055 and 16-O-10496**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

NOTICE OF DISCIPLINARY CHARGES



By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))

- in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.



By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))



By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))

- I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').



By Fax Transmission: (CCP §§ 1013(e) and 1013(f))

Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.



By Electronic Service: (CCP § 1010.6)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the person(s) at the electronic addresses listed herein below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.



(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: *(see below)*



(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,

Article No.: 9414 7266 9904 2010 0797 12 at Los Angeles, addressed to: *(see below)*



(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,

Tracking No.: addressed to: *(see below)*

Person Served	Business-Residential Address	Fax Number	Courtesy Copy to:
ANDREW J. STERN	Law Ofc Andrew J Stern 3580 Wilshire Blvd Ste 900-30 Los Angeles, CA 90010	Electronic Address ajsternlaw@aol.com	Law Ofc Andrew J Stern 3580 Wilshire Blvd Ste 900-30 Los Angeles, CA 90010

☐ via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed at Los Angeles, California, on the date shown below.

DATED: December 28, 2016

SIGNED:

Genelle De Luca-Suarez
Genelle De Luca-Suarez
Declarant